

July 16, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2485**
Proposed Ordinance No. **2004-0272**

KING COUNTY HOUSING AUTHORITY and HIGHLINE SCHOOL DISTRICT NO. 401
Road Vacation Petition

Location: Portion of numerous roads and public prescriptive easements within the proposed boundary of the Plat of Greenbridge (vicinity of White Center).

Petitioners: King County Housing Authority and
Highline School District No. 401
represented by **Robert Johns**
Johns Monroe Mitsunaga
1500 – 114th Avenue Southeast, Suite 102
Bellevue, WA 98004
Telephone: (425) 467-9960
Facsimile: (425) 451-2818

King County: Department of Transportation,
Road Services Division, *represented by*
Dennis Gorley
201 S. Jackson St.
Seattle, WA 98104-3856
Telephone: (206) 296-6522
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:
Department's Final:
Examiner:

Approve road vacation
Approve road vacation
Approve road vacation, subject to conditions

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for item no. V-2485 was received by the Examiner on June 16, 2004.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on item no. V-2485 was opened by the Examiner at 9:35 a.m., June 29, 2004, in the Department of Development and Environmental Services Hearing Room, 900 Oakesdale Avenue SW Renton, Washington; was continued at 7:04 p.m., June 30, 2004, in the Jim Wiley Community Center, 9800 – 8th Avenue Southwest, Seattle, Washington; and closed on July 1, 2004, in the Department of Development and Environmental Services Hearing Room. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Petitioners:	See "Subject" above
Location of Road:	portions of SW 97 th Place, SW 98 th Place, 3 rd Avenue SW, 4 th Place SW, SW 100 th Place, SW 100 th Street, SW 98 th Street, SW Roxbury Street, 4 th Avenue SW, 5 th Avenue SW, 5 th Place SW, 6 th Avenue SW, 6 th Place SW, 7 th Place SW, 7 th Avenue SW, 8 th Avenue SW, 8 th Place SW, 9 th Avenue SW, 9 th Place SW, 10 th Avenue SW, 10 th Place SW, and 11 th Avenue SW and other public right-of-way rights as created by prescription within the proposed preliminary plat boundary of Greenbridge
Thomas Bros.:	Page 624, H & J, 4 & 5
Zoning:	R-18
Right-of-way classification:	B
Area:	Approximately 27 acres
Compensation:	Waived

2. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the June 29, 2004, public hearing and the statement of facts contained in Proposed Ordinance No. 2004-0472. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Metropolitan King County

Council.

3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.
4. Vacation of the subject right-of-way would have no adverse effect on the provision of fire and emergency services to the subject property or surrounding area.
5. The King County Housing Authority and Highline School District No. 401 have filed a joint petition to vacate all the existing rights-of-way within the boundaries of the Greenbridge preliminary plat, the application for which was submitted and reviewed concurrently with the road vacation petition. The Greenbridge property comprises approximately 98 acres and is currently developed with the Park Lake Homes public housing project, except for an approximately 200,000 square-foot tract at the southeast corner of 8th Avenue Southwest and Southwest 102nd Street upon which a new elementary school is being constructed by the Highline School District. The total of all dedicated rights-of-ways currently existing within the exterior plat boundaries is estimated in the Greenbridge Final EIS to comprise about 27 acres.
6. The Petitioners propose to vacate all of the existing rights-of-way and then rededicate them after the new road system is constructed as part of the Greenbridge final plat. The Park Lake Homes development was originally built as federal wartime housing, then conveyed to the King County Housing Authority after World War II ended. The present complex of roads and rights-of-way is the result of a confusing series of dedications, deeds and easements in which the dedicated rights-of-way in many locations are at variance with the actual road construction pattern and ambiguities within the chain of title are frequently encountered.

As described in the Department of Transportation's June 24, 2004, letter of transmittal to the County Council, this erratic history has "created a mix layout of road right-of-ways and public roadway easement, some of which were created by unrecorded plats, some of which were created by dedication and some were created by deed. Some of the existing road right-of-ways do not have a clear chain of title establishing that they were properly dedicated or otherwise legally created. There are roads in the proposed vacation area that are open for public use. There are some roads that have never been opened, and some may have been opened but are currently not used."
7. The fundamental purpose of the vacation petition is to eliminate the uncertainties within the historic road dedication process as it relates to the Greenbridge redevelopment proposal by simply erasing from the map all the present rights-of-way and replacing them with a new roadway system to be dedicated within the Greenbridge final plat. The practical problem presented by this approach is how to deal with the publicly used portion of the road grid through the Greenbridge property in the interim between preliminary approval and final plat construction. As a demonstration project designated under KCC 21A.55.060, the gap between preliminary and final plat approvals may be as great as 12 years, and with funding uncertainties unavoidably built into the process there is also a small but not inconsequential possibility that the final plat may never be completed. While these issues are not of great practical concern regarding the majority of the roads within the petition area that exist solely to provide local access to the Park Lake Homes facilities, a somewhat greater importance attaches to the handful of roadways that serve an ongoing regional transportation function.

8. The public hearing discussion primarily focused on 4th and 8th Avenues Southwest, and to a lesser degree Southwest 100th Street between 4th and 8th. Fourth Avenue Southwest provides a north/south arterial link through the eastern half of the Greenbridge property that is used mainly by traffic originating outside the Park Lake Homes development. It is already built to urban standards and is not proposed for major reconstruction as a part of the Greenbridge redevelopment process. Further west, 8th Avenue Southwest performs a lesser but similar function, but will undergo significant reconstruction and widening as part of the Greenbridge plat. Both 4th and 8th Avenues Southwest are signalized at their intersections with Southwest Roxbury Street, and both are on Metro Transit routes. Seattle Public Utilities maintains major water mains within both rights-of-way as well as an east/west linkage under Southwest 100th Street. Southwest 100th Street between 4th and 8th Avenues Southwest provides street access to the new White Center Heights elementary school facility but otherwise serves primarily as a local access roadway to Park Lake Homes, with a more convenient east/west through linkage lying further south at Southwest 102nd Street. Southwest 100th Street through Park Lake Homes follows a meandering path which in one section falls conspicuously outside any dedicated right-of-way.
9. The public benefit expected from the Petitioners' proposal to vacate all roads within the Greenbridge property and rededicate them with the final plat is that such a process would provide undisputed title documentation for the ultimate constructed road network, provide to the Housing Authority a clear title to those areas no longer needed for road use and, with conveyance of an easement to the County for the interim period, provide for no interruption of public use of the primary roadways except for temporary construction closures. It is anticipated that whatever improvements may be required to 4th Avenue Southwest could be accomplished without actually closing the roadway.

CONCLUSIONS:

1. In view of the ongoing transportation function of 4th and 8th Avenues Southwest, much of the discussion at the public hearing focused on whether the process proposed by the Petitioners and supported by the Department of Transportation could be implemented for these roadways consistent with the requirement of RCW 36.87.060 (1) that "if the county road is found useful as part of the county road system it shall not be vacated..." In a purely literal sense, it is beyond debate that both 4th and 8th Avenues Southwest support an important regional transportation function and as such are useful parts of the County road system. But a review of the Washington Supreme Court decisions dealing with road vacations discloses that the scope of legally permitted government actions has been expanded to include broad public purposes generally so long as the order of vacation possesses "within it some element of public use." *Young v. Nichols*, 152 Wn. 306, at 308 (1929).
2. The public purpose and use promoted by the vacation petition submitted by the King County Housing Authority and the Highline School District are that it will rectify a clouded title history which afflicts the current right-of-way dedications and may impede the optimal future public use of the affected properties. The actual continued public use of essential roadways will be assured by the easement back to the County which will accompany the vacation approval.
3. The remaining concern that should be addressed is the risk that the certainty of retaining public

ownership of 4th and 8th Avenues Southwest could become compromised by the remote possibility that the Greenbridge final plat will never be recorded or that within the lengthy preliminary approval period some unforeseen circumstance could arise that requires the County to perfect its title in these roadways before the final plat is ready to be recorded. Accordingly, the easement mandated as a condition precedent to the effectiveness of the vacation needs to be modified to include a provision allowing the County to require the immediate reconveyance of 4th and 8th Avenues Southwest upon 30-days written notice.

4. The rights-of-way subject to this petition are sufficiently defective as to their legal validity and areal extent as to be useless to the County road system in their present form, and the public will be benefited by removing these title ambiguities through the vacation process as proposed.
5. The notice of hearing on the report of the Department of Transportation was given as required by law and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
6. The Petitioners are both governmental agencies that provide important services to the general public, including low-income families. Accordingly, the compensation due for the vacated right-of-way areas should be waived. The easement for continued public use of the roadways should include appropriate provisions for the continued repair and maintenance of affected public utilities and services. Finally, the proposed ordinance for this vacation should be corrected to indicate that the proposed vacation area is B class and not A class.

RECOMMENDATION:

APPROVE proposed Ordinance no. 2004-0272 to vacate the subject roads, subject to the following condition precedent:

1. This vacation order shall not become effective until the Petitioners convey back to King County an easement for public use of the road system and for utility maintenance within the roads and rights-of-way of the Greenbridge plat property as currently constructed. Such easement shall be approved as to form by the Prosecuting Attorney's Office and contain a provision conferring upon King County a specifically enforceable right to require upon 30-days written notice the immediate conveyance to the County of the rights-of-way within the vacation area for 4th and 8th Avenues Southwest as depicted within the approved preliminary plat map for Greenbridge; i.e., at a width of 60 feet for 4th Avenue Southwest between Southwest Roxbury and Southwest 100th Street, and for 8th Avenue Southwest a width of 76 feet from Southwest Roxbury Street to South 100th Street and an effective width of 60 feet from Southwest 100th Street south to the plat boundary.

RECOMMENDED this 16th day of July, 2004.

Stafford L. Smith

King County Hearing Examiner

TRANSMITTED this 16th day of July, 2004, to the following parties and interested persons:

Mary Cross	Don Dauphiny	Terry Davis
John Eliason	Gerald Foley	Chris Fowler
Keith Goldsmith	Tim Healy	Robert D. Johns
KC Housing Authority	Jennifer Lau	Tim & Elizabeth McCaffrey
Anna Nelson	Noel Nelson	Eugene & Joyce Olson
Puget Sound Energy	J. B. Ransom	Resident
Gerald Retzlaff	Al Schmidt	Al Schmitt
Seattle KC Health Dept.	Seattle Public Utilities	SW Suburban Sewer Dist.
Dick Thurnau	Diana VanWinkle	Kyong Sin Yu
Debbie Arima	Mark Bergam	Greg Borba
Trishah Bull	Tommy Burdette	Curt Crawford
Neil DeGoojer	Pam Elardo	Nancy Gordon
Dennis Gorley	David Gualtieri	Todd Hurley
Fatin Kara	Kristen Langley	Paulette Norman
Robert Nunnenkamp	Lisa Pringle	Lydia Reynolds-Jones
Carol Rogers	Jon Sloan	Charlie Sundberg
Michael Thomas	Caroline Thompson	Steve Townsend
Loretta Brittenham	Rod McLavey	

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before July 30, 2004*. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before August 6, 2004*.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of

Washington, for the purpose of review of the action taken.

MINUTES OF THE JUNE 29 AND 30, AND JULY 1, 2004, PUBLIC HEARINGS ON DEPARTMENT OF TRANSPORTATION FILE NO. V-2485.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Mark Bergam, Kristin Langley and Lisa Pringle, representing the Department of Development and Environmental Services; Dennis Gorley representing the Department of Transportation; Robert Johns, John Eliason and Allen Schmidt representing the Petitioners; and Keith Goldsmith, Anna Nelson, Jennifer Lau, Chris Fowler, Dick Thurnau, Tim Healy, Rod McLavey, Loretta Brittenham and Gerald Retzlaff.

The following Exhibits were offered and entered into the record at the June 29, 2004, public hearing:

- Exhibit No. 1 Department of Transportation Report to the Hearing Examiner dated June 22, 2004, with 17 attachments
- Exhibit No. 2 Petition transmittal letter dated August 26, 2003, to the DOT from the Clerk of the Council
- Exhibit No. 3 August 20, 2003, letter of explanation and Petition for Vacation of a County Road including legal descriptions of Petitioner's properties.
- Exhibit No. 4 Copy of map identified as "Proposed Right-of-way Vacation Exhibit for Greenbridge Preliminary Plat" received by Council Clerk on August 25, 2003
- Exhibit No. 5 September 24, 2003, letter to Hugh Goldsmith & Assoc., Inc., explaining process and requesting clarification of legal description
- Exhibit No. 6 October 3, 2003, letter from Goldsmith & Associates clarifying legal description issues with Roxbury
- Exhibit No. 7 Vicinity map
- Exhibit No. 8 Title reports related to right-of-ways and land ownership
- Exhibit No. 9 Ordinance 14662 adopting provisions for approval of the Built Green demonstration projects, dated June 2, 2003
- Exhibit No. 10 June 2004 transmittal letter to Council providing recommendation of KCDOT and County Road Engineer
- Exhibit No. 11 Ordinance transmittal letter from King County Executive to Councilmember Phillips
- Exhibit No. 12 Proposed ordinance 2004-0272
- Exhibit No. 13 Notice of hearing as posted
- Exhibit No. 14 Affidavit of posting for hearing
- Exhibit No. 15 Notice of hearing as published by Council Clerk
- Exhibit No. 16 Affidavit of Publication for date of hearing

The following exhibits were entered into the record at the July 1, 2004, continued public hearing:

- Exhibit No. 17 Letter from Robert Johns re: County Authority to Vacate Roads, dated June 30, 2004
- Exhibit No. 18 Diagrams: 1) Proposed Right of Way Vacation and 2) Proposed Right of Way vs. Existing Right of Way

Attachments